

COMPLICATED SPECIAL ACCOUNTS - ALLIED PAPER/PORTAGE
CREEK/KALAMAZOO RIVER

SITE

Allied Paper/Portage Creek/Kalamazoo River
(MID006007306)

RPM

Jim Saric

SITE HISTORY

The U.S. Environmental Protection Agency (EPA) Superfund site known as Allied Paper/Portage Creek/Kalamazoo River is located within the city of Kalamazoo in Kalamazoo County, Michigan. The site consists of five paper mill properties, five disposal areas, and a segment of the Kalamazoo River that is approximately 80 miles long. EPA addresses the site by way of six operable units (OU).

1. OU1: Allied Paper Property/Bryant Mill Pond Area (Monarch and Bryant paper mills, Bryant Mill Pond Area, Historic Residuals Dewatering Lagoons ("HRDLs"), Former Residual Dewatering Lagoons ("FRDLs"), Former Type III Landfill, and Western Disposal Area);
2. OU2: Willow Boulevard and A-Site Landfill;
3. OU3: King Highway Landfill;
4. OU4: 12th Street Landfill; and
5. OU5: Portage Creek and Kalamazoo River sediments
6. OU6: Georgia-Pacific Mill Property (DELETED)
7. OU7: Plainwell Mill

Between 1957 and the early 1970's, Allied Paper - owner/operator of certain paper manufacturing facilities located in the City of Kalamazoo, Michigan - was one of many paper companies which recycled carbonless copy paper at paper mills located at the site. As a result of the recycling process, wastewater containing Polychlorinated biphenyls (PCB) was released directly into adjacent Portage Creek or directed to the City of Kalamazoo wastewater treatment facility, while the settled residuals were placed in onsite dewatering lagoons. In the early 1970's, the Michigan Department of Natural Resources (MDNR) identified dangerous concentrations of PCBs in local sediments as well as the local fluvial network. Based on the level of PCBs present in the local ecosystem, the site was placed on the National Priorities List (NPL) in 1990.

Until 1988, Allied Paper was a wholly owned subsidiary of SCM Corporation. In 1986, SCM Corporation was acquired by HM Holdings, Inc., then a wholly-owned subsidiary of Hanson Industries, Inc. In 1996, Hanson Industries underwent a "de-merger." Millennium Chemicals, Inc. was formed, and HM Holdings became its wholly-owned subsidiary. HM Holdings then changed its name to Millennium Holdings, Inc. (MHI).

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Between 1986 and 1993, MHI worked in conjunction with the State of Michigan to perform multiple investigative activities at the site. In November 1990, EPA entered into an Administrative Order on Consent (AOC) (SDMS# 165863) with MHI that required MHI to install a fence and display signs around a portion of the site to restrict access and minimize direct exposure to the contaminants. In 1993, Michigan Department of Environmental Quality (MDEQ) entered into an agreement with several parties for the performance of a Remedial Investigation/Feasibility Study (RI/FS) at OU1; the RI/FS is ongoing.

On April 17, 1998 Region 5 of EPA executed an Action Memorandum for response actions to be undertaken by EPA for the removal of PCBs from the Bryant Mill Pond Area of the site. In 1998, EPA entered into a formal agreement (SDMS# 165283) with MHI that required MHI, in lieu of performance of response actions, to pay response costs incurred connection with the time-critical cleanup of the Bryant Mill Pond Area.

FINANCIAL HISTORY

Pursuant to the terms of the 1998 agreement, MHI paid a total of \$7.5 million to EPA; the funds were deposited in the Allied Paper/Portage Creek/Kalamazoo River Special Account 059B, created on August 13, 1998. The removal action was completed in 1999.

In 2003, EPA entered into a settlement agreement with the former owner/operator of the Plainwell Mill, Plainwell, Inc. Plainwell, Inc. contributed \$6,246,278 plus \$162,411.54 in interest as a cashout to resolve their alleged liability at the site. The funds were deposited in the Plainwell Impoundment Area Special Account 059B10, which was created as a product of this settlement agreement.

On September 28, 2001, EPA issued a Record of Decision (ROD) for OU4 that detailed their decision on the final remedial action to be implemented at that part of the site. In 2005, EPA entered into a Consent Decree (CD) (SDMS# 230189) with Weyerhaeuser that required the latter to implement the remedy identified in the 2001 OU4 ROD. Additionally, the CD required Weyerhaeuser to perform the RI/FS for the Plainwell Mill, one of five paper mills at the site, and implement the remedy that EPA selected for the mill. The terms of the CD provide for the creation of two additional Special Accounts, the Kalamazoo River Special Account 059B05 and the Operable Unit #4/Plainwell Mill Property Disbursement Special Account 059B04. Per the agreement, EPA recovered \$6,338,851.53 from Weyerhaeuser. \$138,851.53 was used to reimburse EPA for past response costs and was deposited in the Plainwell Impoundment Area Special Account 059B10; \$6.2 million was directed to the Kalamazoo River

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Special Account 059B05 to conduct or finance response actions at or in connection with the Kalamazoo River Operable Unit (OU5). Upon receipt of the \$6,338,851.53, EPA transferred \$6.2 million from the Plainwell Impoundment Area Special Account 059B10 to the Operable Unit #4/Plainwell Mill Property Disbursement Special Account 059B04. EPA shall use up to \$6.2 million of these funds, excluding interest earned, to reimburse Weyerhaeuser for certain allowable costs at OU4 and the Plainwell Mill. Finally, Weyerhaeuser was required to pay all future response costs incurred by EPA in association with response actions at OU4 and the Plainwell Mill; reimbursement for future response costs was directed to the Plainwell Impoundment Special Account 059B10.

On November 16, 2006, EPA entered into an AOC with Georgia-Pacific that required Georgia-Pacific to perform certain removal actions at the Kalamazoo and Hawthorne Mills. Additionally, the terms of the agreement required Georgia-Pacific to pay \$29,207.35 to EPA for past response costs. Furthermore, Georgia-Pacific was to reimburse EPA for all future response costs associated with this particular agreement. All funds recovered were to be directed to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site Special Account or into any other special account created for response actions at the site or for the Kalamazoo River Operable Unit of the site.

On February 21, 2007, EPA and the State of Michigan entered into an AOC (SDMS# 298151) with MHI and Georgia-Pacific, LLC, for the performance of certain removal activities at the Plainwell Impoundment Area of the site. Georgia-Pacific is the current owner of two mill properties located in Kalamazoo Township, Michigan. Between 1967 and 2000, Georgia-Pacific manufactured paper at one of these facilities, commonly referred to as the "Kalamazoo Mill." Georgia-Pacific purchased the second mill property, commonly referred to as "Hawthorne Mill," in 1976, but never conducted any paper making activities at this location. Additionally, MHI and Georgia were required to reimburse EPA for future response costs in an amount not to exceed \$300K in the first year after the AOC is entered and \$325K each year thereafter. All payments received as reimbursement for future response costs were to be deposited in the Kalamazoo River Special Account 059B05; however, they were actually directed to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site Special Account 059B, which was closed in 2006. Pursuant to the terms of the agreement, EPA requested approval from EPA's Office of Site Remediation Enforcement (OSRE) to disburse \$1 million to MHI and Georgia-Pacific from the Kalamazoo River Special Account 059B05 upon completion of the specified removal activities. The Plainwell Impoundment Disbursement Special Account 059B10 was created as a product of the agreement to retain the \$1 million that was supposed to be

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transferred from the Kalamazoo River Special Account 059B05 for disbursement. The \$1 million was never transferred.

EPA entered into a second AOC (SDMS#) on February 21, 2007, which provided for the performance of a supplemental RI/FS at the site. Pursuant to the terms of the AOC, MHI and Georgia-Pacific were required to reimburse EPA for all response costs incurred within the scope of the agreement. All funds recovered were to be deposited in the Allied Paper/Portage Creek/Kalamazoo River Special Account.

In 2009, EPA entered into a CD with Georgia-Pacific for reimbursement of costs incurred by EPA for response actions at OU2 and performance of response work at OU2, which is outlined in the ROD issued on September 27, 2006. Per the terms of the agreement, Georgia-Pacific was to pay \$225,509.91 to EPA as reimbursement of past response costs. Additionally, Georgia Pacific was to reimburse EPA for all future response incurred within the scope of the agreement. All funds recovered under this agreement were to be directed to the Allied Paper/Portage Creek/Kalamazoo River Special Account. An additional Special Account was created as a product of this agreement, the Allied Paper/Portage Creek/Kalamazoo River Special Account 059B02. The \$225,509.91 was directed to the new account upon receipt.

Also in 2009, EPA entered into an AOC with Georgia-Pacific that provided for performance of a removal action at or in connection with the Plainwell Dam #2. In addition to performance of the work, Georgia-Pacific was required to reimburse EPA for all future response incurred within the scope of the agreement. The total amount to be paid by Respondent pursuant to the agreement was to be deposited in the Kalamazoo River Special Account 059B05. The agreement also provides for the creation of the Plainwell Dam #2 Disbursement Special Account that would be funded with \$2 million from the Kalamazoo River Special Account 059B05. EPA agreed to make the funds in the Plainwell Dam #2 Disbursement Special Account, including interest earned on the funds in the Plainwell Dam #2 Disbursement Special Account, available for disbursement to Respondent as partial reimbursement for performance of the work under this settlement agreement.

SPECIAL ACCOUNT NAME	SPECIAL ACCOUNT NUMBER	PURPOSE
Allied Paper/Portage Creek/Kalamazoo River Special Account (Bryant Mill)	059B	Created as a product of 1998 agreement with MHI to retain cashout for use to fund

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Pond Area Special Account)		removal actions
Allied Paper/Portage Creek/Kalamazoo River Special Account	059B02	Created as a product of the 2009 AOC with Georgia-Pacific to retain funds recovered in association the RD/RA at OU2
OU4/Plainwell Mill Property Disbursement Special Account	059B04	Created as a product of the 2005 CD with Weyerhaeuser to reimburse Weyerhaeuser for costs incurred for RD/RA at OU4
Kalamazoo River Special Account	059B05	Created as a product of the 2005 CD with Weyerhaeuser to fund response actions at OU5
Plainwell Impoundment Area Disbursement Special Account	059B10	Created as a product of the 2003 settlement agreement with Plainwell, Inc.
Plainwell Dam #2 Disbursement Special Account		Provided for in 2009 Plainwell Dam #2 Removal AOC with Georgia-Pacific, but never created

ASSESSMENT OF SPECIAL ACCOUNTS

059B - The Allied Paper/Portage Creek/Kalamazoo River Special Account 059B was initially funded with \$7.5 in cashout dollars that were recovered from MHI in the 1998 agreement between them and EPA; the funds were exhausted for removal actions at the Bryant Mill Pond Area of the site and Region 5 closed the Special Account on August 31, 2005. Even though the Special Account was closed, it received a \$29,207.35 deposit on December 4, 2006, which was a payment associated with past costs recovered under the 2007 Plainwell Impoundment Removal AOC entered into between EPA, the State of Michigan, Georgia-Pacific and MHI. Additionally two oversight payments - \$300K and \$325K - associated with the same enforcement instrument were directed to the Allied Paper/Portage Creek/Kalamazoo River Special Account 059B in 2009.

059B02 - The Allied Paper/Portage Creek/Kalamazoo River Special Account 059B02 was provided for by the 2009 OU2 RD/RA CD and initially funded with \$225,509.91 in past costs recovered under the same agreement. Payments for future response costs should be directed to this Special Account as RD/RA activities continue to occur at OU2.

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059B04 - The OU4/Plainwell Mill Property Disbursement Special Account 059B04 was provided for in the 2005 CD with Weyerhaeuser, which provided for performance of the RA at OU4 and a supplemental RI/FS at the Plainwell Mill property. This Special Account was initially funded with \$6.2 million transferred from the Plainwell Impoundment Area Disbursement Special Account 059B10 and has been used to reimburse Weyerhaeuser for certain Allowable Costs at OU4 and the Plainwell Mill.

059B05 - The Kalamazoo River Special Account 059B05 was also provided for in the 2005 CD with Weyerhaeuser. This Special Account was initially funded with \$6.2 million dollars recovered from Weyerhaeuser under the same agreement to reimburse response costs at or in connection with OU5. The Kalamazoo River Special Account 059B05 is currently functioning as intended.

059B10 - The Plainwell Impoundment Area Disbursement Special Account 059B10 was created as a product of the 2003 Plainwell Settlement Agreement. The Special Account was initially funded with a cashout payment of \$6,246,278 plus \$162,411.54 in interest. Additionally, \$138,851.53 recovered under the 2005 CD as reimbursement for past costs was directed to the Plainwell Impoundment Area Disbursement Special Account 059B10. \$6.2 million was transferred from the Plainwell Impoundment Area Disbursement Special Account 059B10 to the OU4/Plainwell Mill Property Disbursement Special Account 059B04. No additional disbursements have been made from that Special Account.